Supreme Court, U.S.
FILED
JUN 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1790

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE NEMOURS FOUNDATION, GILBANE BUILDING COMPANY, AND THE AETNA CASUALTY & SURETY COMPANY,

Petitioners,

v.

PIERCE ASSOCIATES, INC. AND FEDERAL INSURANCE COMPANY,

Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Burt M. Rublin
WOLF, BLOCK, SCHORR AND SOLIS-COHEN
Twelfth Floor Packard Building
Philadelphia, PA 19102

Of Counsel

Henry W. Sawyer, III
DRINKER, BIDDLE & REATH
Philadelphia National Bank Building
Broad and Chestnut Streets
Philadelphia, PA 19107
(215) 988-2725

Attorney of Record for Respondents

No. 88-1790

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE NEMOURS FOUNDATION, GILBANE BUILDING COMPANY, AND THE AETNA CASUALTY & SURETY COMPANY,

Petitioners,

v.

PIERCE ASSOCIATES, INC. AND FEDERAL INSURANCE COMPANY,

Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Respondents submit this Supplemental Brief pursuant to Supreme Court Rule 22.6 solely in order to bring to this Court's attention the important decision rendered by the Delaware Supreme Court on June 14, 1989 in *The Nemours Foundation v. Manganaro Corporation, New England,* No. 189, 1989. In that unanimous decision, authored by Chief Justice Christie, the Court *refused* to accept certification of the *same* two issues of Delaware law raised in the Petition for Certiorari in this case — to wit, (1) whether Nemours could sue Gilbane's subcontractors as a third-party beneficiary of those subcontracts; and (2) whether Nemours could maintain negligence claims against the subcontractors for recovery of its mere economic loss.

The Reply Brief filed by Petitioners in this Court on June 10, 1989 was devoted almost exclusively to the certification proceeding recently initiated by Nemours against Manganaro, which Petitioners claimed constituted "a further significant ground" for granting certiorari. (Reply Brief at 2). Petitioners argued that "the Court should defer consideration of the petition for writ of certiorari pending the outcome of the certification procedure in the Delaware Supreme Court." (Reply Brief at 6). Now that the certification proceeding has run its course, there is simply no reason to defer adjudication of the Petition for Certiorari, as requested by Petitioners.

Respondents agree with Petitioners that the denouement of the *Manganaro* certification proceeding is indeed highly "significant" here, as the Delaware Supreme Court is the tribunal with the greatest interest in the predictions of Delaware law which the Third Circuit made in this case. The Delaware Supreme Court has now deemed those determinations unworthy of its review by means of certification, and so too should this Court deem those state law rulings unworthy of its review by certiorari. The Petition for Certiorari should be denied.

Respectfully submitted,

Burt M. Rublin
WOLF, BLOCK, SCHORR
AND SOLIS-COHEN
15th and Chestnut Streets
Philadelphia, PA 19102

Of Counsel

Henry W. Sawyer, III
DRINKER, BIDDLE &
REATH
Broad and Chestnut Streets
Philadelphia, PA 19107

Attorney of Record

June 16, 1989